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 USA Capital Diversified Trust Deed Fund, LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:
☐ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

**ORRICK, HERRINGTON &
 SUTCLIFFE LLP'S FIRST
 INTERIM FEE APPLICATION
 (JUNE 1, 2006 - JULY 31, 2006)**

Date: September 28, 2006
 Time: 9:30 a.m.
 Place: Courtroom #1

Orrick, Herrington & Sutcliffe LLP (“Orrick”), counsel to the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (“DTDF Committee”), hereby submits its First Interim Fee Application (“Application”) and seeks an order of this Court: (1) allowing Orrick’s professional fees in the amount of \$467,794.50 and expenses incurred in the amount of \$8,173.54 for the period of June 1, 2006 through July 31, 2006 (“Application Period”); and (2) authorizing debtor USA Capital Diversified Trust Deed Fund, LLC (“DTDF”) to pay such amounts upon entry of an order approving this Application.¹

This Application is supported by the Declaration Of Marc A. Levinson In Support Of Orrick, Herrington & Sutcliffe LLP’s First Interim Fee Application (“Levinson Decl.”) and the Declaration of Robert Worthen (“Worthen Decl.”) filed contemporaneously herewith.

I.

INTRODUCTION/BACKGROUND

1. On April 13, 2006, the five above-captioned debtors (collectively, “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the “Bankruptcy Code”). The Debtors continue to operate their businesses as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Debtors’ cases (“Chapter 11 Cases”) are being jointly administered.

2. On May 10, 2006, the Office of the United States Trustee (“UST”) appointed four official committees: (i) the DTDF Committee; (ii) the Official Committee Of Holders Of Executory Contract Rights Through USA Commercial Mortgage Company (“Direct Lenders Committee”); (iii) the Official Unsecured Creditors Committee For USA Commercial Mortgage Company (“Unsecured Creditors Committee”); and (iv) the Official Committee Of Equity

¹ Pursuant to procedures approved by this Court in the Interim Fee Procedures Order (defined in paragraph 6 hereof), Orrick previously circulated a monthly fee statement (“Statement”) requesting that the DTDF pay Orrick interim compensation in the amount of \$374,235.60, representing eighty percent (80%) of the total fees of \$467,794.50 for services performed during the Application Period; and (ii) interim reimbursement of expenses in the amount of \$8,173.54, representing one-hundred percent (100%) of the expenses incurred during the Application Period. Per the Interim Fee Procedures Order, objections are due on September 15, 2006 – after the deadline for the filing of this Application. At the September 28th hearing on this Application, Orrick will advise the Court whether any objection was received by September 15th and, if not, whether Orrick received interim compensation and reimbursement of expenses from the DTDF. Following its receipt of payment from DTDF, Orrick will request that the Court authorize the DTDF to pay Orrick the remaining amounts allowed by the Court.

1 Security Holders Of USA Capital First Trust Deed Fund, LLC (“FTDF Committee”). The UST
2 filed an amended notice of appointments to the DTDF Committee on or about June 1, 2006.
3 Currently, there are six official members of the DTDF Committee and one *ex officio* member.
4 Levinson Decl., ¶ 3.

5 3. Although Stutman Treister & Glatt PC initially sought to be employed to represent
6 each of the Direct Lenders Committee, the DTDF Committee and the FTDF Committee, in
7 response to certain interested parties’ objections and concerns about the propriety of having a
8 single law firm represent three committees that may have different or competing interests in the
9 Chapter 11 Cases, the Court determined that each of the four committees should employ and
10 retain its own separate counsel. On June 1, 2006, the DTDF Committee retained Orrick to serve
11 as its counsel in these Chapter 11 Cases. Levinson Decl., ¶ 4.

12 4. On or about June 9, 2006, the Debtors filed an Application for Administrative
13 Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of
14 Professionals (Docket No. 570) (“Interim Fee Procedures Motion”) which requested that the
15 Court approve procedures for the interim compensation and reimbursement of expenses of
16 professionals whose employment had been approved by order of the Court.

17 5. On June 12, 2006, the DTDF Committee filed both its application to employ
18 Orrick and a supporting declaration of Marc A. Levinson.² Levinson Decl., ¶ 5. On June 22,
19 2006, this Court entered an order approving the DTDF Committee’s employment of Orrick as its
20 counsel, *nunc pro tunc* as of June 1, 2006. *Id.* and Ex. A.

21 6. At the August 4, 2006 omnibus hearing, the Court granted the Interim Fee
22 Procedures Motion. On August 25, 2006, pursuant to the Administrative Order Establishing
23 Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals
24 (Affects All Debtors) (“Interim Fee Procedures Order”), Orrick sent a monthly fee statement,
25 along with copies of its billing statements for the Application Period, to the Debtors, the UST,
26 the Direct Lenders Committee, the FTDF Committee and the Unsecured Creditors Committee.

27
28 ² Orrick filed a supplemental Levinson declaration and a second supplemental Levinson declaration
regarding Orrick’s employment on June 16, 2006 and August 11, 2006, respectively. Levinson Decl., ¶ 5.

1 Levinson Decl., ¶ 6. The Interim Fee Procedures Order was entered on the Court's docket on
2 August 29, 2006.

3 7. Orrick sent a copy of its June 2006 billing statement to the Chair of the DTDF
4 Committee on August 18, 2006. Levinson Decl., ¶ 7. On August 25, 2006, Orrick sent a copy of
5 its monthly fee statement, which included copies of its billing statements for the entire
6 Application Period, to the Chair of the DTDF Committee. *Id.* The Chair, on behalf of the DTDF
7 Committee, has reviewed Orrick's billing statements, has found Orrick's fees and costs to be
8 reasonable and necessary, and has approved Orrick's fees and costs for payment by DTDF,
9 subject to Court approval of this Application. Worthen Decl., ¶¶ 3-4.³

10 8. This is Orrick's first interim fee application for allowance and payment of
11 compensation for professional services rendered and reimbursement of actual and necessary costs
12 incurred on behalf of the DTDF Committee. Levinson Decl., ¶ 8. Copies of Orrick's detailed
13 billing statements for June 2006 and July 2006 are attached to the Levinson Declaration as
14 Exhibits B and C, respectively.

15 II.

16 SUMMARY OF FEES AND EXPENSES

17 9. The following chart summarizes Orrick's requested fees, sorted by the
18 professionals who have devoted time on behalf of the DTDF Committee during the Application
19 Period:

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27 ³ The Diversified Trust Deed Fund Committee and Orrick reserve the right to seek compensation in other
28 of the Debtors' bankruptcy cases pursuant to Sections 503(b)(3) and (4) of the Bankruptcy Code at such
time in the future that they deem appropriate.

Timekeeper	Rate	Hours (June)	Hours (July)	Total Hours	Total Fees
Partners					
Marc A. Levinson	\$560.00	153.80	143.20	297.00	\$166,320.00
Daniel J. Tyukody	\$635.00	12.20	4.40	16.60	10,541.00
Of Counsel					
Jeffery D. Hermann	\$570.00	116.30	127.80	244.10	139,137.00
Associates					
Lynn Trinka Ernce	\$465.00	129.50	70.60	200.10	93,046.50
Kimberly E. Neureiter	\$375.00	46.40	94.60	141.00	52,875.00
Law Clerks/Paraprofessionals					
Rachael Barainca	\$140.00	1.90	9.30	11.20	1,568.00
Patricia Eichar (Law Clerk)	\$225.00	16.10	0.00	16.10	3,622.50
Shelley Laufman White	\$185.00	3.70	0.00	3.70	684.50
Totals		479.90	449.90	929.80	\$467,794.50

10. The blended rate for Orrick attorneys during the Application Period was \$520.46 per hour (\$467,794.50 divided by 898.80 hours). The blended rate for all Orrick professionals and paraprofessionals during the Application Period was \$503.11 per hour (\$467,794.50 divided by 929.80 hours).

11. A summary of the services provided by Orrick during the Application Period, sorted by task billing category, is set forth in the following chart:

Task Code	Description	Hours (June)	Hours (July)	Total Hours
B110	Case Administration	137.10	20.60	157.70
B120	Asset Analysis and Recovery	120.30	13.90	134.20
B130	Asset Disposition and Sales	32.20	2.10	34.30
B152	Meetings & Communications With Other Committees	25.40	32.90	58.30
B153	Meetings & Communications With The Committee Or Members Of The Committee	68.60	18.00	86.60
B154	Meetings & Communications With The Creditors Or Equity Holders	5.10	19.10	24.20
B160	Fee/Employment Applications	25.20	19.70	44.90
B170	Fee/Employment Objections	0.00	3.10	3.10
B210	Business Operations	0.00	2.40	2.40
B230	Financing/Cash Collections	27.20	1.90	29.10
B310	Claims Administration And Objections	9.50	23.80	33.30
B320	Plan and Disclosure Statement (including Business Plan)	0.40	8.60	9.00
B503	Litigation	5.40	235.20	240.60
B504	EPIC Loan	7.20	6.50	13.70
B505	10-90 Loan	16.30	42.10	58.40
	Totals	479.90	449.90	929.80

12. A summary of Orrick's requested fees, sorted by task billing category, is set forth in the following chart:

Task Code	Description	Fees (June)	Fees (July)	Total Fees
B110	Case Administration	\$70,750.50	\$10,602.00	\$81,352.50
B120	Asset Analysis and Recovery	66,347.50	7,628.50	73,976.00
B130	Asset Disposition and Sales	12,895.50	1,184.50	14,080.00
B152	Meetings & Communications With Other Committees	12,855.50	18,220.50	31,076.00
B153	Meetings & Communications With The Committee Or Members Of The Committee	30,329.50	9,396.00	39,725.50
B154	Meetings & Communications With The Creditors Or Equity Holders	2,476.00	9,134.50	11,610.50
B160	Fee/Employment Applications	11,692.50	6,628.00	18,320.50
B170	Fee/Employment Objections	0.00	1,498.50	1,498.50
B210	Business Operations	0.00	1,135.00	1,135.00
B230	Financing/Cash Collections	14,453.00	1,010.00	15,463.00
B310	Claims Administration And Objections	4,568.50	9,072.50	13,641.00
B320	Plan and Disclosure Statement (including Business Plan)	224.00	4,807.50	5,031.50
B503	Litigation	2,712.00	117,732.00	120,444.00
B504	EPIC Loan	4,051.50	3,583.00	7,634.50
B505	10-90 Loan	9,000.50	23,805.50	32,806.00
	Totals	\$242,356.50	\$225,438.00	\$467,794.50

13. Orrick's time spent in preparing this Application was incurred after the Application Period, and will be disclosed in Orrick's second interim fee application.

14. Voluntary Write-offs: Orrick voluntarily wrote off approximately \$15,000 of fees billed to this case as duplicative, unnecessary or unproductive. The \$467,794.50 in total fees for the Application Period is net of the amount voluntarily written off. Levinson Decl., ¶ 9.

15. Travel Time: The lead attorneys representing the DTDF Committee reside in Orrick's offices in Sacramento and Los Angeles. Attendance at hearings and meetings in Las Vegas generally requires that such attorneys travel by plane or automobile to Las Vegas. Mindful of the limited resources in this case, Orrick has voluntarily limited its charges for travel time to and from Las Vegas and Salt Lake City to 2.5 hours each way, although such travel generally takes longer. In fact, the actual travel time is approximately 3.5 hours each way and maximum time, due to flight delays and the like, can exceed (and has exceeded) five hours. Orrick attorneys almost always work on the plane on this matter while traveling. Levinson Decl., ¶ 10.

1 III.

2 **SERVICES RENDERED**

3 16. The following summarizes, by billing category, the services rendered by Orrick
4 during the Application Period. Far more detailed descriptions may be found in Orrick's invoices
5 attached to the Levinson Declaration.

6 **Category B110 - Case Administration.** Orrick devoted 157.70 hours to tasks
7 encompassed in this category, representing \$81,352.50 of fees. As described below, the matters
8 handled by Orrick that have been classified under this category are diverse and wide-ranging, and
9 generally include numerous services which do not neatly fit under the other task billing categories
10 established by Orrick. Thus, while they all fall under the heading of Case Administration for
11 purposes of this Application, many of the services classified here are substantive matters. The
12 great bulk of such services (137.10 out of 157.70 hours) were rendered during the first month of
13 Orrick's employment in an attempt to "hit the ground running," since other professionals had
14 been in the case for a month or two by the time Orrick was retained. The services rendered
15 during the Application Period in this category break down into several subgroups, described as
16 follows:

- 17 • Learning About The Case And The Business. Getting up to speed on the cases,
18 the companies, the loan portfolios, background and issues since the case had been
progressing for almost two months before Orrick was retained
 - 19 • Retaining Other Professionals. Locating and retaining Nevada counsel and a
20 financial advisor to assist the DTDF Committee and Orrick, preparing *pro hac vice*
and Nevada counsel designation papers
 - 21 • Corporate Governance. Dealing with corporate governance matters, including
22 drafting of DTDF Committee bylaws and negotiating the terms of joint
defense/common interest agreement and/or confidentiality agreements with the
23 Debtors and the other official committees appointed in these cases
 - 24 • Joint Protocols Motion. Reviewing, analyzing and providing input on the
25 committees' joint motion to establish protocols for communications with investors,
including negotiation of confidentiality provisions in light of Bankruptcy Code
section 1102(3)
 - 26 • Other Miscellaneous Motions. Attending meetings, reviewing, analyzing and
27 drafting responses to the "hold funds" motion, the motion to disqualify Fertitta
from the Direct Lenders Committee and other various motions
- 28

- 1 • Conferences Among Professionals: Conferences among DTDF Committee
- 2 professionals in preparation for DTDF Committee meetings, hearings or meetings
- 3 with other interested parties, where multiple topics were covered
- 4 • Due Diligence Request. Reviewing and providing input on the committees' joint
- 5 due diligence request to the Debtors
- 6 • Analysis of Key Agreements. Reviewing and analyzing DTDF operating and
- 7 servicing agreements and research regarding motion to terminate same
- 8 • DTDF Committee Email Account: Establishing an email account for
- 9 communicating with individual DTDF investors
- 10 • General Case Administration. Reviewing daily electronic notices,
- 11 non-working travel time, and other general case administration matters

12 **Category B120 – Asset Analysis and Recovery**. Orrick devoted 134.20 hours to this

13 category, representing \$73,976.00 of fees. Much of Orrick's time in this category was spent in

14 the first month (120.30 out of 134.20 hours) and was devoted to investigating and learning about

15 DTDF's assets. The services rendered during the Application Period in this category break down

16 into several subgroups, described as follows:

- 17 • Loan Analysis. Extensive review and analysis of documentation for loans in
- 18 which the DTDF is a direct lender, including multiple on-site visits to Debtors' offices in Las Vegas, conference calls and meetings
- 19 • Asset And Recovery Analysis: Extensive analysis of collateral securing DTDF
- 20 loans and review and analysis of collection options and strategies for enforcement
- 21 of DTDF loans; review and analysis of DTDF schedules and statement of financial
- 22 affairs; review DTDF prospectus and analysis regarding potential causes of action
- 23 and recovery options
- 24 • Investment Partners Settlement And Security Agreement. Review and analysis of
- 25 Debtors' proposed security agreement with Investment Partners, including
- 26 extensive meetings with DTDF professionals and others, drafting and revising
- 27 limited opposition to motion to approve Investment Partners agreement and
- 28 attending hearing on motion
- Interim Distribution Analysis. In anticipation of Debtors' motion to distribute
- funds to direct lenders, research and analysis regarding options and strategies for
- interim distributions, meetings and communications with Debtors and other
- committees regarding statements to be provided to investors
- Ashby And Investment Partner Loans. Review, analysis and multiple meetings
- with DTDF professionals and borrowers (including Messrs. Ashby, Redman and
- Milanowski) regarding loans, assets and related issues
- Debtors' Proposed Transactions. Analysis of various transactions proposed by
- Debtors involving loans and collateral in which DTDF has an interest, meetings,
- telephone conferences and drafting responses to motions (i.e. Franklin/Stratford,
- Amesbury/Hatterspoint, HFA, Boise/Gowen)

1 **Category B130 – Asset Disposition.** Orrick devoted 34.30 hours to this category,
2 representing \$14,080.00 of fees. The services rendered during the Application Period in this
3 category generally involved efforts related to the Debtors' then-impending motion to distribute
4 funds to direct lenders, including research and analysis of interim distribution options, strategies
5 for interim distribution to benefit constituents of the DTDF and drafting argument outlines for the
6 DTDF Committee's anticipated response to the interim distribution motion. Orrick is aware that
7 some of the time it spent on this analysis also was billed to Category B120, and believes that such
8 work is properly categorized under either.

9 **Category B152 – Meetings And Communications With Other Committees.** Orrick
10 devoted 58.30 hours to this category, representing \$31,076.00 of fees. Most of the time spent by
11 Orrick in this category was spent in the weekly (and sometimes more-frequent) all-hands
12 meetings involving the Debtors and the other committees to discuss global case issues and issues
13 of interest to all constituencies, such as the Debtors' distribution motion, fee procedures motion,
14 plan alternatives and the like. Most of the all-hands meetings were conducted via telephone, but
15 there were some all-hands meetings that were conducted in person in Las Vegas. Time spent in
16 this category also included initial discussions with the various other committees following
17 Orrick's retention to represent the DTDF Committee, regarding case background and issues of
18 common interest among the various committees.

19 **Category B153 – Meetings And Communications The Committee Or Members.**
20 Orrick devoted 86.60 hours to this category, representing \$39,725.50 of fees. The time spent by
21 Orrick in this category consisted primarily of the numerous in-person and telephonic meetings of
22 the DTDF Committee necessary to keep the DTDF Committee apprised of all of the fast-moving
23 events in these Chapter 11 Cases and to advise the DTDF Committee in connection with strategic
24 decisions to be made by the DTDF Committee. This category also includes time spent by Orrick
25 reporting on various case events and Orrick's recommendations to the DTDF Committee via
26 numerous email memoranda and in communicating with individual members of the DTDF
27 Committee.

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Category B154 – Meetings And Communications With Creditors Or Equity Holders.

Orrick devoted 24.20 hours to this category, representing \$11,610.50 of fees. The time spent by Orrick in this category primarily was geared towards improving communication with and access to information by the approximately 1,900 investors in the DTDF. Among other things, Orrick worked to establish and maintain a DTDF Committee website for communications with DTDF investors. Much of Orrick's time also was spent communicating directly with investors seeking information about the case and the DTDF Committee, both by telephone and via email utilizing the DTDF email account established by Orrick.

Category B160 – Fee/Employment Applications. Orrick devoted 44.90 hours to this category, representing \$18,320.50 of fees. The services rendered during the Application Period in this category break down into several subgroups, described as follows:

- **Retention of DTDF Professionals.** Drafting employment applications and supporting pleadings and attending hearings to approve employment of DTDF Committee professionals, Orrick, Beckley Singleton, and FTI Consulting
- **Retention of Professionals for Debtors and Other Committees.** Reviewing applications, commenting on proposed orders and attending hearings regarding professionals being employed to represent the Debtors or other committees, and the Debtors' request to continue the employment of the Debtors' professionals for an additional 60 days
- **Interim Fee Procedures Motion.** Communicating with Debtors and other committees regarding the propriety of establishing interim fee procedures in these Chapter 11 Cases and reviewing, analyzing and responding to Debtors' interim fee procedure motion
- **Billing Procedures and Bill Review.** Establishing billing categories and protocols for use by Orrick timekeepers and reviewing and editing Orrick's time records for purposes of interim fee requests and future fee applications to ensure compliance with guidelines, among other things

Category B170 – Fee/Employment Objections. Orrick devoted 3.10 hours to this category, representing \$1,498.50 of fees. The services rendered during the Application Period in this category include the review and analysis of objections to the Debtors' motion to continue the employment of its professionals and drafting a joint response to the Debtors' motion.

Category B210 – Business Operations. Orrick devoted 2.40 hours to this category, representing \$1,135.00 of fees. This time related primarily to initial review and analysis of the Debtors' cash collateral motions and budgets, communications with the DTDF Committee's

1 financial advisors, preparing a joint response to the cash collateral motion with the FTDF
2 Committee and review objections to the motion filed by other committees and constituents.

3 **Category B230 – Financing/Cash Collections.** Orrick devoted 29.10 hours to this
4 category, representing \$15,463.00 of fees. The services rendered during the Application Period in
5 this category include review and analysis of the Debtors’ various motions for use of cash
6 collateral and for debtor-in-possession financing, meetings with the Debtors and/or other
7 committees regarding debtor-in-possession motion and term sheets, filing or joining in responses
8 to such motions and attending the hearings on the motions.

9 **Category B310 – Claims Administration/Objections.** Orrick devoted 33.30 hours to
10 this category, representing \$13,641.00 of fees. The bulk of Orrick’s services in this category
11 relate to the proof of claim filed against the DTDF and other Debtors by Prospect High Income
12 Fund and five other bondholders, and research and analysis regarding possible responses to that
13 proof of claim. As disclosed in the second supplemental declaration of Marc A. Levinson filed in
14 this case, during the Application Period, Orrick discovered that the six bondholders collectively
15 referred to themselves as “Highland Capital,” which turned out to be an Orrick client. Although
16 Orrick had not represented Highland Capital in connection with the DTDF or any of the other
17 debtors, out of an abundance of caution, Orrick promptly transferred all responsibility for the
18 matter to the DTDF Committee’s Nevada counsel.

19 **Category B320 – Plan And Disclosure Statement.** Orrick devoted 9.00 hours to this
20 category, representing \$5,031.50 of fees. The services rendered during the Application Period in
21 this category included meetings and discussions among the DTDF Committee professionals in
22 response to information about various reorganization plan options mentioned at meetings with the
23 Debtors and the other committees, and preliminary discussions with various potential plan
24 proponents.

25 **Category B503 – Litigation.** Orrick devoted more time to this category than to any other,
26 devoting 240.60 hours to this category, representing \$120,444.00 of fees. The bulk of Orrick’s
27 efforts related to the Debtors’ motion to distribute \$65 million to direct lenders (none of which
28 would go to DTDF), and were focused on reviewing, analyzing and strategizing regarding

1 possible responses and legal theories for the DTDF Committee's opposition to the distribution
2 motion (including substantive consolidation, recharacterization of debt, netting of interim
3 distributions, among other theories), drafting the DTDF Committee's opposition to the
4 distribution motion, reviewing and analyzing the Debtors' supplement to their distribution motion
5 and the objections to the distribution motion filed by other interested parties in these Chapter 11
6 Cases. Orrick also devoted time to analyzing potential litigation claims against third parties, and
7 analyzing various motions, including the stay relief motion filed by Standard Property
8 Development.

9 Given the fact that the Debtors' distribution motion did not provide for any payment
10 to DTDF, Orrick believes that the substantial time and effort it expended with respect to the
11 distribution motion was and is of critical importance. While the Court ultimately did not adopt
12 the DTDF Committee's position regarding the amount of funds that should be held back from the
13 proposed distribution given the uncertainties in the case, the DTDF Committee's opposition to the
14 distribution motion provided the Court with extensive information about the looting of the DTDF
15 and misrepresentations to DTDF investors at the hands of USA Capital's former principals as
16 well as the DTDF Committee's arguments why the DTDF, as a victim of the former principals'
17 Ponzi-like scheme, should not be left out in the cold while other direct lenders (who by chance
18 were lucky enough not to have been looted themselves) obtain substantial recoveries of principal
19 and interest. The DTDF Committee's opposition to the distribution motion thus put front and
20 center some of the key issues facing the DTDF in these Chapter 11 Cases. The issues researched
21 may again surface in these cases in connection with plan litigation and/or adversary proceedings.
22 Accordingly, Orrick submits that the substantial time it spent on matters in this category during
23 the Application Period were reasonable and necessary.

24 **Category B504 – EPIC Loan.** Orrick devoted 13.70 hours to this category, representing
25 \$7,634.50 of fees. The EPIC loan is the second largest loan in the DTDF's portfolio. The
26 services rendered during the Application Period in this category include review and analysis of
27 the EPIC loan, reviewing and coordinating the drafting of a complaint related to the EPIC Loan
28 with the Debtors for purposes of collecting the loan, reviewing and analyzing the appraisal of

1 collateral securing the EPIC loan, and communicating with the Debtors and others regarding
2 developments in the collection of the EPIC loan.

3 **Category B505 – 10-90 Loan**. Orrick devoted 58.40 hours to this category, representing
4 \$32,806.00 of fees. The 10-90, Inc. loan (“10-90 Loan”), which is 100% owned by DTDF is,
5 by far, the largest loan in DTDF’s portfolio, accounting for approximately 50% of the total.
6 The 10-90 Loan is non-performing, with a current investment of \$55,113,781 and an interest
7 receivable as of July 31, 2006 of \$28,375,618 bringing the total owed to DTDF from borrower
8 USA Investment Partners LLC (“IP”) to \$83,489,399 as of July 31, 2006. It appears that between
9 April 2002 and February 2005 the proceeds of the 10-90 Loan were used to fund IP and its
10 primary members, Tom Hantges and Joe Milanowski, who used a substantial portion of DTDF’s
11 funds (*i.e.* the 10-90 Loan) as a source of funds for projects and other deals of IP and IP-related
12 entities. The 10-90 Loan is secured by the assignment of membership interests in Ashby USA,
13 LLC, IP, Capital Land Investors, LLC and Random Developments, LLC. It is not secured by first
14 deeds of trust that encumber the relevant real property, real property interests or by second deeds
15 of trust or other real property. Accordingly, collateral securing the 10-90 Loan is not as readily
16 recoverable in foreclosure or otherwise as it would be were deeds of trust properly in place.

17 Given the extreme importance of the 10-90 Loan to DTDF, and the complexities created
18 by the loan structure and the convoluted use of the loan proceeds by Hantges and Milanowski,
19 Orrick and the DTDF Committee’s financial advisors have devoted, and will continue to devote,
20 considerable time to this category in an effort to recover assets and collect on the 10-90 Loan for
21 the benefit of DTDF investors.

22 The services rendered during the Application Period in this category include review and
23 analysis of the 10-90 loan, including on-site document review in Las Vegas and a number of
24 in-person meetings in both Southern California and Las Vegas with the Debtors, borrowers and
25 other interested parties), communications and meetings with the Debtors and others regarding
26 developments in the collection of the 10-90 loan. In short, recovery on the 10-90 Loan is critical
27 to DTDF investors, and Orrick submits that the substantial time that it has spent on this category
28 during the Application Period was reasonable and necessary.

IV.

SUMMARY OF EXPENSES

17. The total amount of expenses requested by Orrick in performing necessary services for the DTDF Committee in this case during the Application Period is \$8,173.54, which amount breaks down as follows:

Description	June 2006	July 2006	Total
Duplicating Expense	\$18.30	\$55.20	\$73.50
Facsimile	0.00	38.00	38.00
Lexis Research	1,556.75	2,786.00	4,342.75
Local Taxi Expense	0.00	35.00	35.00
Out of Town Business Meals	323.14	40.00	363.14
Outside Services	40.72	0.00	40.72
Parking Expense	102.00	32.00	134.00
Postage	3.54	2.22	5.76
Telephone	266.00	294.78	560.78
Travel Expense, Air Fare	919.80	559.70	1,479.50
Travel Expense, Local	153.83	26.70	180.53
Travel Expense, Out of Town	370.69	227.50	598.19
Westlaw Research	253.42	68.25	321.67
Totals	\$4,008.19	\$4,165.35	\$8,173.54

18. Orrick generally handles regular and routine photocopying in-house. It is seeking reimbursement of \$.20 per page. This amount is less than the amount Orrick customarily charges for photocopying expenses. Orrick's copy machines automatically record the number of pages made when the person that is photocopying enters the client's account number into a device attached to the copy machine. Whenever feasible, Orrick sends large copying projects to outside copy services that charge bulk rates for photocopying. In such instances, Orrick charges clients the same amount that Orrick pays the outside service.

19. Orrick normally charges its clients \$1.50 per page for each outgoing facsimile transmission. However, for purposes of these Chapter 11 Cases, charges for all outgoing facsimile transmissions have been reduced to \$1.00 per page. Orrick does not charge its clients for incoming faxes.

20. Orrick bills directly to its clients the cost of transmitting mail. Postage is logged and billed through a computer system. Orrick calculates postage costs at a rate set by the postal service for the weight and class of a given mailing. For large mailings, Orrick occasionally uses

1 an outside mailing house, whose charges are passed on directly to its clients without surcharge of
2 markup. Orrick also seeks reimbursement for overnight package charges, such as Federal
3 Express, messenger delivery charges without surcharge or markup.

4 V.

5 **COMPLIANCE WITH GUIDELINES AND ORDER**
6 **ESTABLISHING INTERIM COMPENSATION PROCEDURES**

7 21. Orrick endeavors to control fees and expenses by providing services in an efficient
8 and effective manner. To this end, Orrick diligently works to coordinate and facilitate the
9 efficient prosecution of the matters for which it is employed. Staffing of matters within the case
10 is done with the objective of providing the level of representation appropriate to the significance,
11 complexity, or difficulty of the particular matter. Due to the sensitive nature and complexity of
12 these Chapter 11 Cases, it is not always possible to delegate authority to persons with lower
13 billing rates. However, Orrick has made every effort to avoid unnecessary duplication of effort.
14 When more than one attorney attended a meeting or hearing, such attendance was necessary to
15 adequately represent the interests of the DTDF Committee.

16 22. Orrick reviews all client billings for reasonableness and makes adjustments so that
17 the charges are consistent with the value of the services provided. Orrick charges hourly rates
18 that are similar to those rates charged by comparable law firms for similar legal services. *See,*
19 *e.g., In re Ginji Corp.*, 117 B.R. 983, 990 (Bankr. D. Nev. 1990). Orrick's blended hourly rate,
20 not including paraprofessionals, during this Application Period was \$520.46. Orrick's blended
21 hourly rate, including paraprofessionals, during this Application Period was \$503.11.

22 23. As described above, Orrick has voluntarily reduced its requested fees by
23 approximately \$15,000, and Orrick also has limited its charges for travel time by capping travel
24 time between California and Las Vegas/Salt Lake City at 2.5 hours each way, despite the fact that
25 such travel actually takes longer – often far longer – than 2.5 hours each way.

26 24. Orrick believes that the fees and expenses sought in this Application are
27 appropriate, and were reasonable and necessary in light of the complexity of these Chapter 11
28 Cases and the scope and difficulty of the business and legal issues involved.

VI.

CONCLUSION AND PRAYER

In summary, Orrick has rendered valuable services to the DTDF Committee and now prays that the Court award, on an interim basis, fees in the sum of \$467,794.50, and the reimbursement of costs in the sum of \$8,173.54, for a total award of \$475,968.04 for the Application Period. Such award will be interim only, subject to review at the conclusion of this case.

Dated: August 31, 2006

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